INDEX

	Page.
Opinion below	1
Jurisdiction	1
The question presented	2
Statement	2
Argument	11
Appendix	18

AUTHORITIES CITED

Cases:	
Muskrat v. United States, 219 U. S. 346	12
Statutes:	
Act of March 2, 1889, c. 421, 25 Stat. 1012	3
Act of February 16, 1891, Sec. 2, c. 240, 26 Stat. 764	4
Act of June 7, 1897, c. 3, 30 Stat. 62, 87	6, 8, 16
Act of April 4, 1910, c. 140, 36 Stat. 269, 284	8
Act of June 3, 1920, c. 222, 41 Stat. 738	9
Act of January 9, 1925, c. 59, 43 Stat. 730	9
Act of February 13, 1925, Sec. 3(b), c. 229, 43 Stat. 936, 939	1
Agreement December 31, 1892, Article XVI (ratified August 15, 1894, c. 290, 28 Stat. 286, 317, 319)	5, 11, 12, 15
Treaty of April 19, 1858, Article VIII, 11 Stat. 743, 746	2, 3, 12
Miscellaneous:	
House Document 535, vol. 98, 56th Cong., 1st sess	7, 8, 18
Senate Report No. 3316, 57th Cong., 2d sess	8, 30
Senate Report No. 2369, 59th Cong., 1st sess	8, 44

In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 250

THE YANKTON SIOUX TRIBE OF INDIANS, petitioner

v.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Court of Claims is not reported. It will be found in the record at page 25.

JURISDICTION

The judgment to be reviewed was entered June 8, 1925. (R. 27.) A motion for new trial was made and entertained by the court June 22, 1925, and denied October 26, 1925. (R. 27.) The petition for certiorari was filed December 9, 1925 (R. 28), and the writ was issued pursuant to Section 3(b) of the Act approved February 13, 1925 (c. 229, 43 Stat. 936).

THE QUESTION PRESENTED

The question presented in this case is whether the Yankton Sioux Tribe of Indians owned an interest in the Red Pipestone Quarry Reservation in Minnesota other than a mere easement to remove stone, and whether the United States by using this tract for the erection and maintenance of an Indian Industrial School is legally or equitably liable to the Indians for the value of the property.

STATEMENT

The Red Pipestone Quarry or reservation is a tract of land of 648.2 acres located in southwestern Minnesota. Within its boundaries is located the famous "Wakan," or holy ground, from which from time immemorial Indians of the surrounding nations obtained the material for their pipes. Those bands of Sioux other than the Yankton band, who have heretofore claimed any interest in the land, have ceded it.

On April 19, 1858, a Treaty was concluded between the United States and the Yankton Sioux Indians (11 Stat. 743, 746), Article VIII of which provided that—

> The said Yankton Indians shall be secured in the free and unrestricted use of the Red Pipestone quarry, or so much thereof as they have been accustomed to frequent and use for the purpose of procuring stone for pipes; and the United States hereby stipulate and agree to cause to be surveyed and marked so much thereof as shall be neces-

> sary and proper for that purpose, and retain the same and keep it open and free to the Indians to visit and procure stone for pipes so long as they shall desire.

In accordance with this agreement the United States caused as much land as appeared to be necessary and proper for the purposes of the reservation to be surveyed and marked. (R. 22.) The tract so established was 648.2 acres in extent. The Treaty of 1858 seems to have reserved to the Yankton Sioux a right in the nature of an easement to go upon the quarry property and remove stone. Nevertheless, since that Treaty was made, the Yankton band has claimed the ownership of the tract, and the controversy has continued until the present time.

At times the United States has recognized the existence of an interest in the Indian greater than a mere easement. By the Act of March 2, 1889 (c. 421, 25 Stat. 1012), Congress directed that the reservation be valued, including the actual value of a strip of land across it then occupied by a railway company, and an appraisal made of the damage to the balance of the lands by reason of the occupation by the railroad. The appraisement was made and the sum of $1,740, collected by the Secretary of the Interior from the railroad company for the right of way, was paid to the petitioners. That Act also provided that no sale of any part of the tract should be made without the consent of a majority of the adult male members of the tribe and

that the proceeds of any such sales should be covered into the annuity fund of the Indians or expended as they should determine.

By the Act of February 16, 1891 (c. 240, 26 Stat. 764), Congress authorized Indian industrial schools to be established in Wisconsin, Michigan, and Minnesota. Section 2 of that Act was as follows:

> That the Secretary of the Interior may select any part or portion of the nonmineral public domain of the United States in either of said States, which he may deem necessary and suitable, not exceeding six hundred and forty acres, and may, by appropriate order in that behalf made and recorded in the General Land Office, perpetually withdraw such land from sale and entry and dedicate the same to use as a site for such industrial or training school; and if such portion of the public domain is not found available or suitably located, then the Secretary of the Interior may secure title by purchase, condemnation, or otherwise of a tract of land not less than two hundred acres for each of said schools, and upon the site thus selected, acquired, or purchased the Secretary of the Interior shall cause to be erected such buildings and improvements as may in his judgment be best adapted to the purpose in view: *Provided,* That the site for said buildings in the various States shall be as follows:
>
> In Minnesota, on the Pipestone Reservation;

> In Michigan, in the county of Isabella;
> In Wisconsin, near some railroad from which all the reservations may be conveniently reached.

Pursuant thereto an Indian school was established on the Pipestone quarry tract and was opened in February, 1893. Meanwhile the United States had entered into negotiations with the Yankton Sioux for the cession of about 150,000 acres of land belonging to them, which resulted in the agreement of December 31, 1892, ceding to the United States many thousand acres of land which were immediately opened to settlement. The Act authorizing construction of an Indian school on the Pipestone quarry had been passed in 1891, and the school was in course of construction, while the agreement of December 31, 1892, was under negotiation. The Indians were disturbed at the act of the United States in taking possession of the Quarry tract for school purposes, and caused to be inserted in the agreement of December 31, 1892, Article XVI, which reads as follows (28 Stat. 317):

> If the Government of the United States questions the ownership of the Pipestone Reservation by the Yankton Tribe of Sioux Indians, under the treaty of April 19th, 1858, including the fee to the land as well as the right to work the quarries, the Secretary of the Interior shall as speedily as possible refer the matter to the Supreme Court of

> the United States, to be decided by that tribunal. * * *
>
> If the Secretary of the Interior shall not, within one year after the ratification of this agreement by Congress, refer the question of the ownership of the said Pipestone Reservation to the Supreme Court, as provided for above, such failure upon his part shall be construed as, and shall be, a waiver by the United States of all rights to the ownership of the said Pipestone Reservation, and the same shall thereafter be solely the property of the Yankton tribe of the Sioux Indians, including the fee to the land.

This agreement was ratified by Congress on August 15, 1894. (C. 290, 28 Stat. 286, 319.) The question was not submitted to the Supreme Court in any way within one year from the day of the ratification of the agreement. The Secretary of the Interior submitted the question to the Attorney General, who advised him that it was "impracticable" to comply with the section of the agreement requiring submission to the Supreme Court. (R. 23, 24.)

Nearly three years after the ratification of the agreement of 1892, and in the Indian Appropriation Act of June 7, 1897 (C. 3, 30 Stat. 62, 87), Congress, proceeding on the assumption that by virtue of the agreement of 1892, and the failure of the United States to bring the question of ownership before the Supreme Court, the Indians had be-

come vested with ownership of the Pipestone Quarries, provided:

> The Secretary of the Interior is directed to negotiate through an Indian inspector with the Yankton tribe of Indians of South Dakota for the purchase of a parcel of land near Pipestone, Minnesota, on which is now located an Indian industrial school.

Indian Inspector McLaughlin undertook these negotiations and finally made an agreement with the Yankton band for the cession of the Reservation to the United States for the sum of $100,000, reserving to the Indians the right to continue to go upon a part of the Reservation, not exceeding 40 acres in area, for the purpose of procuring and removing pipestone for their own use, and to be permitted to camp thereon while visiting the quarry. This agreement and these negotiations are described in House Documents, Vol. 98, 56th Congress, First Session, as Document 535, part of which is printed in the appendix hereto. In these negotiations Inspector McLaughlin said to the Indians (p. 9):

> When your people made the treaty forty-one years ago (Treaty of 1858) they very prudently and wisely provided for visiting and taking stone from that quarry, and so they are the only ones mentioned as having any right in that land. Then in your later agreement of 1892 there was placed an amendment recognizing your right to that quarry. A few years later there was an item in the

> appropriation act which fixed the title absolutely in you. And that is why I am here to-day to negotiate for that land or a portion of it.

The agreement of October 2, 1899, made in accordance with the provisions of the Act of June 7, 1897, for the purchase of the Reservation from the Yankton band for $100,000, was submitted to Congress by the Secretary of the Interior on March 24, 1900, with the recommendation that it be ratified. (Document 535, 56th Congress, First Session; see Appendix to this brief.)

A difference of opinion arose in the Senate as to whether the Yankton Sioux owned an interest in the quarry tract other than an easement to remove pipestone. In March, 1903, Senator Quarles, of the Committee on Indian Affairs, submitted an adverse report on the Bill to ratify the agreement of purchase. Senator Gamble, of the Committee, submitted a minority report. These reports present the arguments for and against ownership by the Indians. (Report No. 3316, 57th Congress, 2nd Sess., printed in the Appendix hereto.) No action was taken, and on April 4, 1906, Senator Gamble, of the Committee on Indian Affairs, submitted a report recommending the passage of the Bill to ratify the agreement. (Report No. 2369, 59th Congress, 1st sess., printed in the Appendix hereto.)

The action taken by Congress was to pass the Act of April 4, 1910 (c. 140, 36 Stat. 269, 284), conferring jurisdiction upon the Court of Claims "to

hear, and report a finding of fact, as between the United States and the Yankton tribe of Indians of South Dakota as to the interest, title, ownership, and right of possession of the said tribe of Indians in and to" the land embracing the Red Pipestone Quarries. The Yankton Sioux Indians filed a petition in the Court of Claims under that Act and the court made the findings of fact appearing on pages 13 to 24 of the record. The court announced no conclusion as to the title of the Yankton Sioux, being of the opinion under a narrow construction of the statute of reference that it had no power to do so. (53 C. Cls. 67, 81.) Subsequently, on July 31, 1924, under the Act of June 3, 1920 (c. 222, 41 Stat. 738), giving to the Court of Claims jurisdiction to adjudicate all claims of the Sioux Indians against the United States, the Yankton Tribe filed its petition in the Court of Claims (R. 13) praying that judgment be entered in its favor for an amount which should compensate the tribe for the land comprising the Pipestone Quarry Reservation, in the event that the court should find that the said land had been misappropriated by the United States (R. 12).

While this suit was still pending before the Court of Claims, Congress, by the Act of January 9, 1925 (c. 59, 43 Stat. 730), expressly conferred jurisdiction upon the Court of Claims to determine and report from the findings of fact theretofore found "the interest, title, ownership, and right of posses-

sion of the Yankton Band of Santee Sioux Indians in and to the land known as the 'Red Pipestone Quarries,'" and to determine what amount, if any, "is legally and equitably due from the United States" to the said Indians for the said quarries and enter judgment thereon (R. 13).

After trial, the Court of Claims found the facts to be as found in the previous submission (R. 13-24), and found further that the Yankton Sioux are still permitted to visit and procure stone from the Pipestone Quarries at such times and in such quantities as they may desire for their own use, and that "the said quarries are still 'open and free to the Indians to visit and procure stone for pipes so long as they so desire'" (R. 24), and concluded that the only interest ever possessed by the Yankton Sioux in the Red Pipe Stone Quarries was the right "to the free and unrestricted use" of the same "for the purpose of procuring stone for pipes," and that this right had been continuously secured to them since the date of the Treaty of 1858, in strict conformity with its terms, and that no amount "is legally and equitably due from the United States" to the plaintiffs, and dismissed the petition (R. 24, 25).

The findings show that while the United States has not disturbed the Indians in their right to visit the quarry and remove pipestone, it has taken possession of some of the land included in the tract of 648.2 acres and constructed an Indian

school thereon. The school is not for the Yankton Indian children exclusively, but for Indian children of the surrounding country generally. In the Report of the Commissioner of Indian Affairs for 1894, at page 387, there is the statement that the school had 150 acres of the Reservation under cultivation. In the "Hearings before the Subcommittee of the Committee on Appropriations of the House, on the Indian Appropriation Bill, 1924," at page 326, there is a statement that the "school lands" comprise 684 and a fraction acres (evidently meaning 648 and a fraction), and that there were then 305 acres under cultivation, so that the United States has evidently taken possession of more of the surface of the ground than the school buildings proper require, and has proceeded on the theory that the entire reservation has been taken for school purposes, subject to the right of the Indians to visit the quarry to obtain stone. There is no finding as to the value of the quarry tract or as to the value of the easement reserved to the Indians.

ARGUMENT

The Court of Claims decided that the provision in the agreement of December 31, 1892, for reference of the controversy to this Court, meant that the Secretary of the Interior should submit the point to the Court in an original proceeding for an advisory opinion, and not that the question should reach the Court in a justiciable controversy on ap-

peal; that this Court has no constitutional power to exercise such a jurisdiction (*Muskrat* v. *United States,* 219 U. S. 346) and that Article XVI of the Agreement of December 31, 1892, providing that the question should be so submitted and that if it were not submitted within one year after ratification of the Treaty the Pipestone Reservation should be solely the property of the Yankton tribe, was wholly inoperative and the interest of the Indians was left as it had been under the Treaty of 1858, which allowed them only an easement to visit the quarry and remove pipestone for their use.

Unable to support the reasoning of the Court of Claims, we feel constrained nevertheless to submit this controversy to this Court for its decision. In view of the sharp difference of opinion in Congress respecting the legal questions involved, and the evident desire of Congress that the courts and not some other Department of the Government should settle this question, and in deference to the views of the Court of Claims, it would be inappropriate to confess error or take any other step which would prevent a decision by this Court. Our effort has therefore been confined largely to presenting the facts and such material as may aid the Court in reaching a conclusion. The views expressed in the brief filed by the United States when the petition for certiorari was under consideration may be summarized as follows:

The Treaty of 1858 gave to the Yankton Sioux Indians only a privilege in the nature of an ease-

ment to go upon the Red Pipestone Quarry for the propose of procuring stone for their pipes. Subsequent to the date of that Treaty and prior to the agreement of December 31, 1892, controversy had arisen between the Indians and the United States with respect to the nature of the interest of the Indians in the quarry, and the United States seems to have recognized in one way or another (such as by paying to the Indians the amount collected from a railroad for a right of way over the Reservation) the existence of an interest in the Indians greater than that of a mere easement.

By the agreement of 1892 the Yankton Sioux ceded to the United States many thousands of acres of their lands which were immediately opened to settlement and have been in large part disposed of by the United States. One of the considerations insisted on by the Indians as a condition to this cession was the insertion in the agreement, of the provision in Article XVI for reference of the controversy over the ownership of the Pipestone quarry tract to the Supreme Court of the United States. If the agreement had stopped there, the United States could contend with effect that because there was no way by which the Secretary of the Interior could constitutionally refer the matter to the Supreme Court no change in the title of the quarry tract was effected by agreement. The agreement did not stop with that provision. It went on to declare that if the Secretary of the Inte-

rior "shall not within one year after ratification refer the question of ownership to the Supreme Court"—

> * * * such failure upon his part shall be construed as, and shall be, a waiver by the United States of all rights to the ownership of the said Pipestone Reservation, and the same shall thereafter be solely the property of the Yankton Tribe of the Sioux Indians, including the fee to the land.

The performance of the stipulation respecting reference of the controversy to this Court for decision seems to have been not a condition precedent to the acquisition of absolute title by the Indians, but a condition necessary to be performed by the United States to *prevent* absolute title vesting in the Indians, and this provision, ratified by Congress, seems to amount to a grant of the fee to the Indians, operative unless the question of ownership should be brought before the Court for decision within a year from the date of ratification of the agreement and there decided against the Indians.

The provision for reference to the Supreme Court should not be construed so as to render it inoperative or to call for steps impossible under the Constitution and laws of the United States, unless such construction is unavoidable. Without any serious distortion of its terms it might be held that it contemplated bringing the question before the Court in a constitutional way, and that if existing legislation did not then permit it, the United

States, which was one of the parties to the agreement and whose own laws, constitutional or statutory, regulated the jurisdiction of the Court, should have enacted legislation granting to some inferior court of the United States jurisdiction to entertain a suit to try the title, with right of appeal to the Supreme Court. The enactment of valid legislation enabling the Government to obtain the opinion of the Supreme Court was wholly within the control of the United States, and the length of time allowed to accomplish that result was within its control, being dependent upon the date of its ratification of the agreement.

Assuming that the condition did call for a method of submission prohibited by the Constitution, and therefore inoperative, the United States was well informed about that when it made the agreement and ratified it, and if it agreed to grant absolute title to the Indians, unless it did procure a decision from the Supreme Court, its inability to procure such a decision may be said to have no effect to prevent the vesting of title under the other paragraph in Article XVI. If it be suggested that the whole of Article XVI should be considered inoperative and ineffective because inseparable on the ground that the latter part of it, respecting the vesting of title in the Indians, would not have been agreed to without the provision for referring the question to this Court, the question then arises whether an essential provision of the entire agree-

ment, made by the Indians a necessary condition to the cession of large quantities of land, may be stricken out or considered inoperative, leaving the rest of the agreement standing and allowing the United States all the benefits derived therefrom. The complete abrogation of the agreement of 1892 is not possible, because lands ceded by it have been disposed of and can not be restored to the Indians. The United States agreed that the Indians should own the Pipestone Quarry Reservation in fee simple unless the question of ownership should be submitted to this Court within a limited period.

That the failure to procure a decision from this Court operated to vest the fee title in the Indians was recognized by Congress in the Act of June 7, 1897, authorizing the Secretary of the Interior to purchase the "parcel of land near Pipestone, Minnesota, on which is now located an Indian industrial school," and has been consistently admitted by the Department of the Interior in its dealing with and representations to the Indians and its reports to Congress.

More detailed argument for and against the Indian ownership will be found in the Congressional records, printed in the Appendix to the brief, and in the opinion of the Court of Claims.

If the Court concludes that the petitioner owned more than an easement to remove pipestone, the case will have to receive further consideration from the Court of Claims, as there are no findings as to

the extent of the taking or as to the value of what has been taken. The jurisdictional act authorizing a judgment for any amount equitably due the Indians removes any difficulty which might otherwise result from the fact that the taking may have been under claim of title not giving rise to an implied contract to pay compensation.

Respectfully submitted.

WILLIAM D. MITCHELL,
Solicitor General.

OCTOBER, 1926.

APPENDIX

[House of Representatives. Document No. 535. Fifty-sixth Congress, First Session.]

Cession of the Pipestone Reservation in Minnesota

Letter from the Secretary of the Interior, transmitting a copy of a communication from the Commissioner of Indian Affairs and the draft of a bill relating to cession of the Pipestone Reservation in Minnessota

[March 26, 1900, referred to the Committee on Indian Affairs and ordered to be printed]

Department of the Interior,
Washington, March 24, 1900.

Sir: I have the honor to transmit herewith a copy of a communication of the 23d instant from the Commissioner of Indian Affairs, and accompanying copy of an agreement of October 2, 1899, made in accordance with the provisions contained in the Indian appropriation act of June 7, 1897 (30 Stat. 87), with the Yankton Indians in South Dakota for the cession of the Pipestone Reservation, Minn., together with draft of a bill for its ratification, and other papers relating thereto.

These papers are transmitted with recommendation for favorable action by the Congress.

Very respectfully,

E. A. Hitchcock,
Secretary.

The Speaker of the House of Representatives.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, March 23, 1900.

SIR: Referring to your letter dated February 17, 1900, returning, at my request, the agreement made October 2, 1899, with the Yankton Indians in South Dakota for the cession of the Pipestone Reservation near Pipestone, Minn., which was submitted to the Department with office report dated February 1, 1900, I now have the honor to resubmit the said agreement with draft of bill for its ratification, and other papers which accompanied said report of February 1, in duplicate, and to renew my recommendation that the same be transmitted to the Senate and House of Representatives, respectively, for favorable action.

I inclose herewith two copies of this communication.

Very respectfully, your obedient servant,
W. A. JONES,
Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, February 1, 1900.

SIR: Under date of October 17, 1899, the Assistant Secretary of the Interior referred to this office, for consideration and report, a letter by United States Indian Inspector James McLaughlin, dated October 9, 1899, transmitting to the Department an agreement dated October 2, 1899, entered into by him on the part of the United States with the Indians of the Yankton Agency, S. Dak., for the

cession of the Pipestone Reservation, situated in the State of Minnesota. The aforesaid agreement was negotiated in compliance with the following provision contained in the Indian appropriation act approved June 7, 1897 (30 Stats. p. 87):

> The Secretary of the Interior is directed to negotiate, through an Indian inspector, with the Yankton tribe of Indians of South Dakota, for the purchase of a parcel of land near Pipestone, Minn., on which is now located an Indian industrial school.

In accordance with departmental directions, the office prepared a draft of instructions for the guidance of Inspector McLaughlin, the same having been transmitted to the Secretary of the Interior under date of April 25, 1898. Said instructions, it appears, were approved May 23, 1899, by the Acting Secretary and forwarded to Inspector McLaughlin. It seems, however, from the latter's report that he was ordered from time to time to other duties and did not reach the Yankton Agency for the purpose of negotiating with the Indians there until April 24 last.

After conducting negotiations with the Indians until May 2 without having reached an agreement, he suspended negotiations and submitted a report to the Department, dated May 3 last, accompanied by the minutes of the council proceedings with the Indians. From said report it seems that the Yankton Indians, at least some of them, placed a valuation of $3,000,000 on the Pipestone Reservation, but soon reduced those figures to $1,000,000 and subsequently to $100,000, less a 40-acre tract embracing pipestone quarries, which they desired to retain. The inspector first offered the Indians $100 per

acre, or about $64,800, for the entire tract, but after finding the Indians firmly set upon the price last named by them, $100,000, he made them an offer of $75,000 for the entire reservation, with the privilege, however, for the Indians to procure pipestone from the quarries under such regulations as the Department should prescribe. The Indians finally, on May 2, consented to cede the entire reservation for $100,000, reserving to themselves the privilege of procuring pipestone from the quarry as they might desire, but would take no less.

The inspector reported that he did not feel justified at this time in accepting the proposition of the Indians, and therefore discontinued the negotiations in compliance with instructions from the Department to do so, unless an agreement could be concluded with the Indians in a few days. The opinion was expressed by the inspector that the Indians would regret their refusal of his offer, and that after he had left the reservation they would more likely accept a reasonable consideration when negotiations were resumed at some future time.

From the inspector's said report, however, dated October 9 last, it will be seen that it was impossible to secure the cession of said Pipestone Reservation, for a less sum than that named during the negotiations in May last—$100,000—and that, in fact, considerable difficulty was experienced in effecting an agreement even for that amount.

The negotiations last held were commenced by the inspector on September 23 and were continued until October 2, when the agreement was concluded; but it will be seen from the inspector's report that many of the Indians who were favorable to the cession in May last were opposed to it when negotia-

tions were resumed, and that after several councils had been held with the Indians it was discovered that there was no hope of reaching an agreement with them in council, as they were constantly speaking of other matters and were again suggesting $1,000,000 as the price for which they would cede the Pipestone Reservation.

The inspector says that he accordingly concluded to treat with the Indians as individuals, they being citizens of the United States, and that he accordingly suggested the appointment of a committee of eight members of the tribe, five to be selected by the Indians and three by himself. This proposition was agreed to and a committee appointed at once. This committee, Mr. McLaughlin says, consisted of representative men selected from among the more intelligent members of the tribe who were able to speak and write the English language, and after a discussion of the matter with the committee, lasting two days, the agreement was arranged and prepared for submission to the Indians assembled in council, when it was duly signed and executed by a majority of the male adult Indians of the Yankton tribe.

By the terms of Article I of the agreement the Indians cede, surrender, grant, and convey to the United States all the right, title, and interest which they have in and to the parcel of land situated in Pipestone County, Minn., containing 648.2 acres of land and embracing the Red Pipestone quarries famous in Indian legend and in American literature and history.

Article II provides that the Yankton Sioux Indians, and they alone, shall be permitted to go upon that portion of the tract of land ceded, as has been

their custom for generations, for the purpose of procuring and removing pipestone for their own use. It is stipulated that the tract to which the aforesaid privilege applies shall not exceed 40 acres in area, the limits of which shall be suitably indicated and marked under the direction of the Secretary of the Interior, a delegation of five Yankton Indians to be present when such tract is marked and to concur in its selection. It is agreed that said 40 acres shall not be confined to any one legal subdivision unless it be determined that the best quarry of pipestone is situated within the limits of such subdivision. The Yankton Indians are to be permitted to camp and graze their teams upon the tract designated while visiting the quarry for the purpose of obtaining pipestone, and while engaged in procuring and removing the same.

The third article stipulates that in consideration for the cession of said reservation, as provided in Article I, the United States will pay to and expend for the Yankton Indians the sum of $100,000, as follows: Twenty-five thousand dollars shall be expended by the Secretary of the Interior in the purchase of stock cattle, the same to consist of graded Durham and Hereford blood, and to be distributed as equally as possible among the members of the Yankton tribe as soon as practicable after the ratification of the agreement. The remaining $75,000 is to be paid in cash, pro rata, share and share alike, to each man, woman, and child belonging to the Yankton tribe under the jurisdiction of the Yankton Indian Agency, within ninety days from the date of the ratification of the agreement.

Article IV provides that it is understood and agreed on the part of the United States that the tract of land ceded by the Yankton Indians will not be sold or otherwise disposed of, but will be reserved by the Government and maintained as a national park or reservation. It is also agreed in said article that the superintendent or custodian of the reservation shall be required to protect the said pipestone quarry from vandalism and prohibit all persons other than Yankton Sioux Indians from procuring pipestone therefrom.

Article V provides that a memorandum of even date with the agreement of seven certain claims of the Yankton Indians shall be forwarded to the Department by Inspector McLaughlin with the agreement, so that the Secretary of the Interior may consider the same and recommend such Congressional legislation as may be deemed just and equitable.

Article VI provides that the agreement shall take effect and be in force when signed by the inspector, James McLaughlin, and by a majority of the male adult Indians, parties thereto, and when accepted and ratified by Congress.

The agreement, which is dated October 2, 1899, is duly signed and executed by Mr. McLaughlin and by 254 male adult Indians of the Yankton tribe. A certificate is attached by Interpreter William T. Selwyn to the effect that the agreement was fully explained to the Indians, and it was understood by them before signing, and that he witnessed the signatures of the Indians thereto.

A certificate is also attached, signed by James Brown and Peter St. Pierre, agency farmer and additional farmer, respectively, to the effect that

they witnessed the signatures of Inspector McLaughlin and of the 254 male adult Indians to the agreement.

A certificate is also attached by John W. Harding and another certificate by Inspector McLaughlin, both to the effect that there are 480 male adult Indians over 18 years of age belonging to the Yankton Agency, of whom 254, or 14 more than a majority, signed the agreement.

A certificate is also attached by the committee above referred to to the effect that the agreement was fully understood by themselves and by the Indians who signed the same, and that the signatures of the Indians to the agreement were made of their own free will without intimidation, promise of future reward, or any undue influence.

Regarding the agreement Inspector McLaughlin says in his said report of October 9, 1899, that while he regarded the cession of the portion of the Pipestone Reservation upon which the industrial school is located as most essential, yet he at the same time recognized the importance of securing the cession of the entire tract to the Government, and conducted the negotiations on lines that accomplished it. He says the amount stipulated to be paid the Indians as the purchase price—$100,000—may at first glance appear rather high, but when the importance attached to the red pipestone quarry by the Indians in general and the Yankton Tribe in particular, who own the land, together with the fabulous prices that some white people told the Indians the reservation was worth are taken into consideration he regards the amount agreed upon as not excessive, and he adds that inasmuch as he was convinced that the Indians would not accept

any less sum, he concluded the agreement as the best that could be made with them. He remarks that he regards the obtaining of the consent of the Indians to the expenditure of one-fourth of the purchase price in stock cattle instead of having the entire amount paid to them in cash—a point which they contended for from the very beginning until near the close of the negotiations—as being very gratifying and in the interests of the service. He says he endeavored to obtain the consent of the Yanktons to a clause in the agreement permitting Indians of other Sioux agencies to procure pipestone from the quarry, but that they would not give their consent to such a clause under any circumstances, but insisted upon the insertion of the provision to the effect that Yankton Sioux should have the exclusive right to procure pipestone. He says the Indians produced a letter from the Indian Office to Hon. R. J. Gamble to the effect that the Yankton Indians alone had a right to the use of the red pipestone quarry.

Inspector McLaughlin says that Article V of the agreement was inserted to meet the wishes of the Indians, and has no bearing upon the agreement itself other than that it required the transmission of the memorandum referred to. He says there may be some merit in the claims submitted by the Indians, but that with the exception of the first one the vagueness of the claims will require considerable work and investigation, and he suggests that it is very probable that reimbursement has been made for claim 2. Regarding the payment of lease moneys referred to in the sixth item, the inspector expresses the opinion that it would be beneficial if legislation should be enacted by which the

Yanktons could receive the rental price of lands leased by them more promptly than is possible under the present system.

The inspector says the Indians expressed themselves very feelingly when the agreement was concluded, remarking that they had now ceded the last tract of land held in common by them, and that this was, therefore, the last agreement that they would be required to make with the Government as a tribe.

Believing that the agreement entered into by him on the part of the United States for the cession of the Pipestone Reservation is the best that could be obtained from the Indians and from an historical standpoint is in the interest of the Government, Mr. McLaughlin respectfully recommends its approval and ratification.

The agreement as to its main provisions is practically in accordance with the instructions given to the inspector, and the same meets with the approval of this office. It is true that the purchase price is rather high—probably more so than the office at first thought should be paid—but in view of the fact that the Government has a valuable school plant on the Pipestone Reservation, to which additions in the way of new buildings are about to be made, costing $30,000 or more, in compliance with a provision contained in the Indian appropriation act for the current fiscal year, and in view of the further fact that the inspector states the terms made were the best that could be procured, which statement is indicated by the attitude of the Indians as expressed in council, the office believes the interests of the Government will be subserved by the ratification of the agreement.

The Yankton Indians claim to own the Pipestone Reservation in fee simple, and it will be observed the first one of the seven claims in the memorandum referred to in Article V is for $25,000 damages done them by the location of the school plant on the Pipestone Reservation. The Indians allege that this was done without their consent and against their protests. Of course, it is difficult to see how the Indians are damaged by the erection of the school plant, especially as the buildings so erected become a part of the realty; but the presentation of the claim discloses the attitude and feeling of the Indians.

The full history of the reservation and of the title by which the Yanktons hold the same is contained in the instructions to the inspector, two copies of which are inclosed herewith, and it is not deemed necessary to repeat the same here.

Aside from the interests of the Government in said reservation, on account of the school plant thereon as a reason why the agreement should be ratified, another point suggests itself why the Government should own said reservation. The red pipestone quarries are famous in song and story, not only among the American Indians but in the literature of the white race as well. It is therefore felt that this tract of land, possessing, as it does, such national fame, should be owned by the nation and should be appropriately improved as a national park and provision made for its care and preservation. The desirability of setting apart the Pipestone Reservation as a national park has been frequently suggested by those who are competent to judge of the interest attaching thereto from an historical and ethnological standpoint. Among

other persons, Director J. W. Powell, of the Bureau of Ethnology, has warmly recommended the setting aside of the reservation and its preservation as a national park.

The agreement shows care in its preparation and execution, and the minutes of the council proceedings are not only full but show that they were carefully edited. Inspector McLaughlin is to be commended for the thorough and painstaking manner in which the work in connection with the negotiations was done.

As already stated, I am strongly of the opinion that the agreement should be ratified, and I have caused to be prepared, and inclose herewith, a draft of a bill embodying the agreement (in duplicate) to accomplish that purpose, and providing for the appropriation of $100,000 to carry out the provisions of Article III of the agreement.

Besides the draft of bill (in duplicate) and the copies of the instructions to Inspector McLaughlin (in duplicate), above referred to, there are inclosed herewith two copies of the agreement itself; two blue-print copies of township plat showing the survey of the Pipestone Reservation; two copies of the inspector's report of May 3, 1899, and two copies of the council proceedings held at that time by him with the Indians; two copies of the inspector's report of October 9, 1899, and two copies of the council proceedings held from September 23 to October 2; two copies of the memorandum of seven claims referred to in Article V of the agreement, and two copies of this report, and I would respectfully recommend that one copy of each of the aforesaid papers be transmitted to the Senate and House of Representatives, respectively, with

the recommendation that the agreement with the Yankton Indians providing for the cession of the Pipestone Reservation be ratified and confirmed.

Inspector McLaughlin's said reports of May 3 and October 9, 1899, with the papers accompanying the same, including the agreement, are inclosed herewith, with the request that the same be returned to the files of this office when they shall have served their purpose in the Department.

The memorandum of claims referred to in Article V of the agreement will form the subject of a further communication.

Very respectfully, your obedient servant,

W. A. JONES,
Commissioner.

The SECRETARY OF THE INTERIOR.

[Senate Report No. 3316, Fifty-seventh Congress, second session]

AGREEMENT WITH THE YANKTON SIOUX INDIANS OF SOUTH DAKOTA

[March 3, 1903.—Ordered to be printed]

Mr. Quarles, from the Committee on Indian Affairs, submitted the following adverse report, with the views of the minority (to accompany S. 1472):

The Committee on Indian Affairs, to whom was referred the bill (S. 1472) to ratify an agreement with the Yankton Sioux Indians of South Dakota, and making appropriation to carry the same into effect, having considered the same, beg to report as follows:

The claim of the Indians is predicated upon an act of Congress approved August 15, 1894 (28 Stat. L. 315), and particularly upon article 16 of said act, which reads as follows:

If the Government of the United States questions the ownership of the Pipestone Reservation by the Yankton tribe of Sioux Indians under the treaty of April 19, 1858, including the fee to the land, as well as the right to work the quarries, the Secretary of the Interior shall, as speedily as possible, refer the matter to the Supreme Court of the United States to be decided by that tribunal, and the United States shall furnish without cost to the Yankton Indians at least one competent attorney to represent the interests of the tribe before the court.

If the Secretary of the Interior shall not, within one year after the ratification of this agreement by Congress, refer the question of the ownership of the said Pipestone Reservation to the Supreme Court, as provided for above, such failure upon his part shall be construed as, and shall be, a waiver by the United States of all right to the ownership of the said Pipestone Reservation, and the same shall thereafter be solely the property of the Yankton tribe of the Sioux Indians, including the fee of the land.

It is contended by the Indians, as the fact is, that the Secretary of the Interior did not refer the matter of title to the Supreme Court of the United States, and that therefore the United States is now estopped to deny that said tribe of Indians has the fee-simple title to this reservation. In other words, that the forfeiture provided for in the above section should be insisted upon in behalf of the Indians. Your committee can not concur in this legal conclusion for the reasons hereinafter stated.

It is important in the first instance to inquire what title, if any, this tribe of Indians had to this tract of land prior to the negotiation of the pending

treaty. This question is settled conclusively by reference to a treaty between the United States and the Yankton tribe of Sioux Indians, concluded April 19, 1858 (11 Stat. L. 743), wherein it is provided:

> The Yankton Indians shall be secured in the free and unrestricted use of the Red Pipestone Quarry, or so much thereof as they have been accustomed to frequent and use for the purpose of procuring stone for pipes; and the United States hereby stipulate and agree to cause to be surveyed and marked so much thereof as shall be necessary and proper for that purpose, and retain the same and keep it open and free to the Indians to visit and procure stones for pipes so long as they shall desire.

Pursuant to such provision, surveyors were employed to survey out such reservation in August, 1859, and as so surveyed the reservation contained about 648 acres, embracing the quarries commonly known as the "red pipestone." Thus it appears that the exact tenure, as well as definite boundaries, were fixed.

There can be no question, as matter of law, that the language of the treaty above cited created an easement, and nothing more, over the land in question. It is a fundamental principle of law that the acceptance of such a qualified title is a clear recognition of the superior or fee-simple title in the United States and estops the tribe from setting up any antecedent title. For this reason the suggestion made in argument that the Yankton tribe had a nomadic title covering this reservation, in common with large tracts of territory adjacent thereto, is wholly irrelevant.

It remains to consider what effect ought to be given to the terms of article 16 of the treaty of 1894, first above quoted. In the opinion of your committee the construction and contention of the tribe are not sound. The reason why the question of title was not submitted to the Supreme Court, as provided by this section, was that it was found to be a legal and practical impossibility to submit the question of title to the Supreme Court of the United States, which, under the existing Constitution and law, has no original jurisdiction in the premises. The condition being impossible of performance, the question is, What legal consequence should flow from the failure to perform the same?

We understand the law to be that where a forfeiture is hinged upon a condition impossible of performance the convention fails to that extent and no forfeiture can be insisted upon. To hold otherwise in this case would be subversive of justice, because there was in fact no such question or dispute regarding the title of the tribe as should have ever been submitted to the court at all. It is practically conceded by every lawyer upon the committee that the only title that the tribe had was in the nature of an easement, and that the Supreme Court must have so decided if the proposition could have been there submitted. To contend, therefore, that the naked failure to comply with this condition should result in forfeiture of the Government's title is carrying the doctrine of forfeiture to the verge of absurdity. Applying to this question the broad principles of justice which ought to prevail, your committee feels constrained to recommend that the said agreement be reported adversely.

VIEWS OF THE MINORITY

Mr. Gamble, from the Committee on Indian Affairs, begs leave to submit the following minority report on behalf of himself and Senators McCumber and Dubois:

They are unable to concur in the conclusion reached by the majority of the committee in reference to Senate bill No. 1472, "to ratify an agreement with the Yankton Sioux Indians of South Dakota, and making the appropriation to carry the same into effect."

In 1858 the Government determined to remove the Yankton Indians to a diminished reservation on the Missouri River, in what is now the State of South Dakota, and to open up the balance of their reservation to white settlement, and for that purpose requested that a delegation of chiefs and headmen of said tribe be sent to Washington for the purpose of making a treaty of cession. This delegation was selected by the agent with at least the tacit approval of the Indians. It appears that the delegation thus selected, which consisted of thirteen who came in person and three others who appeared by representation, were detained in Washington for a period of five or six months, where a treaty was finally entered into on the 19th day of April, 1858. This treaty was ratified by the Senate on February 16, 1859, and proclaimed the same month (February 26).

There appears to be no question that the Pipestone quarries were well within the country which had been for many years the acknowledged hunting ground of the Yankton Indians, and over which they exercised practically exclusive jurisdiction. Their villages at that time were in the immediate

neighborhood of these quarries, and it was from this locality, and to get them beyond the limits of the State of Minnesota, that the purchase of this territory and their removal to their present diminished reserve on the Missouri River was sought.

It is true that by the treaty of Traverse des Sioux, made seven years prior, these quarries had been included in a cession made by the Sisseton Indians; but it appears evident that the Sissetons, whose homes and villages were far distant from the locality in question, did not and could not have the claim upon it that the Yanktons had, who were living upon the very ground itself.

It was on account of the attempted sale of the Pipestone quarries by the Sioux that the Yanktons had become jealous and suspicious and insisted that no treaty of cession should be made by them that did not, as an absolute sine qua non, contain complete and full recognition of their right and title to the Pipestone quarries.

That they have on every occasion, and at all times, and in every way that has been open to them, insisted upon this, from the very day of the making of the treaty of Traverse des Sioux, is beyond question. It was their practice to appear annually at the payment made to the Sissetons and demand a part of the money on the ground that it was payment for their land.

In his report to the Commissioner of Indian Affairs in 1857 Hon. Charles E. Flandreau, then agent for the Sissetons, speaking on this subject, says:

> It is absolutely necessary that some measure shall be taken to prevent the Yanktons from interfering in the payment of the

> Sissetons and Wahpetons. * * * The Yanktons claim a right to share in the annuities, and every payment that has been made has been protested and disturbed by the presence of these Indians. (Rept. Commissioner of Indians, 1857, p. 59.)

Judge Flandreau, referring afterwards to these instances, makes the statement that the claim of the Yanktons that a part of their country had been included in the Sisseton cession is undoubtedly well founded, and surely no one was in a better position to know than he.

From the affidavits taken in this case, as well as from the known facts concerning the difficulties and delays incident to the negotiation of the treaty of 1858, it is abundantly established that the Indians came to Washington instructed and determined that they would enter into no treaty that did not fully and completely recognize their full and exclusive title to the land, including these quarries. That they understood the article of the treaty which was devoted to this subject as recognizing their right and title without reserve is, and always has been, claimed by every one of these Indians; and the action of the Department at the time indicates that the Government itself, whatever the language of the treaty may be, acknowledged the contention of the Indians to be correct. The Government, in August of the following year, caused the quarries to be surveyed and a copy of the plat and field notes of such survey to be sent to the General Land Office, with the request that said reserve "be respected upon the books" of that office, and when the public surveys were extended over this region in 1872, the Commissioner of Indian Affairs having

again called the attention of the General Land Office to this subject, the lines of the public survey were made to conform to the "Pipestone Reservation boundary" as already established.

Copies of these surveys, with plats and field notes, were transmitted by the Commissioner of the General Land Office to the surveyor-general of the United States for the State of Minnesota, with instructions to "lay the same down"—i. e., the Pipestone Reservation—on the map of the State.

> In July, 1872, * * * the Commissioner directed the surveyor-general to locate the reservation on the official plat in his office, from the field notes and plats of the original survey, and to transmit authentic copies to the general and local offices; or, if it should be impossible to locate it from these data, to direct a resurvey of the tract, so that it might be located and described upon the official plats, and its boundary respected in accordance with the treaty. (United States *v.* Carpenter, III U. S. Rep. 347.)

The decision above referred to was rendered in a case wherein a location was attempted to be made by Carpenter upon the land within the Red Pipestone Reservation, and it was held by the United States Supreme Court that his entry was void, because the land was an Indian reservation and "until the survey was made and the actual extent of the reservation was thus designated, no part of the land containing the quarries could have been taken up," the treaty being notice to the world of the reservation.

Thus it will be seen that all of the acts of the Executive Departments, of the officers of the

United States in all departments, and the courts, treated and considered the land in question as a Yankton Indian reservation. In striking confirmation of this is the report of Agent Foster to the Commissioner of Indian Affairs in 1890 (see Indian Office Rep., 1891, p. 427) referring to the establishment of an Indian school upon the Pipestone Reservation, under direction of the Secretary of the Interior, without the consent of these Indians, wherein Agent Foster says:

> The Red Pipestone Reservation in Minnesota, embracing the celebrated Red Pipestone Quarry, the spot which the Yanktons regard as the center of creation, and which gave them a supremacy over other aboriginal nations, was reserved by the Yanktons in the treaty of 1858 and was subsequently confirmed to them by an act of Congress, also executive department, in causing a survey thereof and designating it upon the plat of surveys as Yankton Indian Reserve. Questions involving the title to this property have frequently been before the Government, and the uniform decision has been that it is the absolute property of the tribe.
>
> It need create no surprise, then, to know that the Indians were greatly astonished and alarmed when they learned that Congress had directed that an Indian school should be erected there without consulting them. They do not object so much to the school, although it is of no benefit to them, as they are already provided with schools; but they regard this action as an attempt to invalidate, if not extinguish, their right to this property peremptorily and without compensation, and say that if one of them should be guilty of such an act he would be punished as a thief.

By an item in the Indian appropriation act approved July, 1891, authority was vested in the Secretary of the Interior to negotiate with the various Indian tribes for the surrender and sale of the surplus lands of their various reservations, and pursuant to that authority a representative of the Government was directed to enter into an agreement with the Yankton Indians for the cession of their surplus lands. They, however, refused to enter into such negotiations until this disputed question of the title to the pipestone quarries should be first determined. The Interior Department recognizing a valid claim on the part of the Yankton Indians, which it was as anxious as the Indians to have determined in some judicial manner and finally disposed of, authorized a provision which was inserted in the agreement as follows:

> If the Government of the United States questions the ownership of the Pipestone Reservation by the Yankton tribe of the Sioux Indians under the treaty of April 19, 1858, including the fee to the land, as well as the right to work the quarries, the Secretary of the Interior shall, as speedily as possible, refer the matter to the Supreme Court of the United States to be decided by that tribunal, and the United States shall furnish without cost to the Yankton Indians at least one competent attorney to represent the interests of the tribe before the court.
>
> If the Secretary of the Interior shall not, within one year after the ratification of this agreement by Congress, refer the question of the ownership of the said Pipestone Reservation to the Supreme Court, as provided for above, such failure upon his part shall be construed as, and shall be, a waiver by

> the United States of all right to the ownership of the said Pipestone Reservation, and the same shall thereafter be solely the property of the Yankton tribe of the Sioux Indians, including the fee of the land.

It is now objected that this provision was inoperative for the reason that the Supreme Court of the United States will not pass upon a purely academic question. That this objection should at this time be urged against the ratification of the present agreement, and against the contention of title on the part of the Indians, seems to us indefensible. The Indians who consented to the submission of the question of their title to the Supreme Court of the United States were, of course, ignorant and knew nothing of the limitations upon our courts. This provision was drafted by the Department of the Interior, and the Indians had every reason to believe that the representatives of the United States who tendered this agreement knew what they were doing, were able to and would see to its fulfillment. Not only was the Interior Department at fault in this regard, but Congress itself ratified this agreement (28 Stat. 315), with this provision in, as above quoted.

The land ceded under this, the treaty referred to, was taken possession of and opened to settlement. How can the Government now be heard to say that it prepared and presented to these Indians a scheme of settlement which was inoperative, and having induced the Indians to consent to it took possession of the consideration moving to the Government, and when the Indians in their simplicity and faith in the Government's ability and intention to carry out its part of the agreement ask to have it per-

formed take refuge behind the fact that the scheme so tendered by itself is ineffectual and decline to make reparation or to pay a just consideration to the Indians whose property it has appropriated?

But this is not all. Having made this agreement of 1892 and put into it an inoperative provision by which the Indians were induced to sign, and Congress having ratified the agreement including such provision, and having neglected to provide a means by which the agreement could be made effectual, the Interior Department again sent its representative, under the authority of Congress, and made another contract with the Indians in council for the settlement of the question and the final disposition of all the troublesome matters involved in this controversy.

By the terms of this final contract entered into between the United States and the Yankton Indians on the 2d day of October, 1899, the Government agreed that for the relinquishment by the Indians of their title to the property in question, and in consideration of its numerous agreements in the past which it failed to carry out, it would pay to said Indians the sum of $100,000.

It appears to the undersigned members of your committee that, laying aside all question of the character or degree of the title originally held to the property by the Yankton Indians, the Government of the United States has put itself in a position where every obligation of honesty and fair dealing demands that it shall no longer trifle with this question, and where, without reference to the merits of the case, it can not with justice refuse to perform the obligation it has entered into. It has put itself into a position where it ought to be

estopped from further contending over a question wherein the Indians have at all times honestly and faithfully performed their part, and wherein all of the difficulties and embarrassments that have arisen have been the result of either the ignorance or carelessness of the Government's own officers, and for which the Indians have never in the slightest degree been to blame.

Beyond all these considerations there is nothing in the agreement last made with these Indians that presents any serious objection to its ratification. In the opinion of the undersigned the Yankton Indians have a strong equitable title to the land in question. Affidavits are herewith submitted from leading citizens of the city of Pipestone, immediately adjoining the land in question, including the mayor and the principal professional and real-estate men of the locality, all of whom place the actual value of the property at figures very nearly corresponding to the price named in the bill and in the agreement. Lands in that locality have very materially appreciated in value since such appraisement was made.

The majority report is based almost solely upon the contention that the provision in the agreement of 1892, which provides that the question of title to the Red Pipestone Quarries shall be submitted to the Supreme Court of the United States for determination, and unless so submitted within one year the title of the Yankton Indians, shall thereafter be deemed to be absolute and never again questioned, is in the nature of a forfeiture and not binding upon the United States.

This contention is without foundation. There is nothing in this case that possesses a single element

of a forfeiture, and this insistence is based upon a false issue. The provision referred to is both in form and substance a provision for a submission of a question, and in the usual language fixing a limitation within which the right shall be exercised. Such limitations are provided everywhere in our system. They are beneficial and useful, and are in strict accord with public policy. That the provision was inoperative was no fault of the Indians. It was the fault only of the Government, and Congress which ratified the agreement, had full power to make it operative, but failed to do so. The Indians have fully performed their part, and the Government has had the benefit of such performance. To make them now suffer for the laches of Congress would indeed be a forfeiture of the most indefensible kind.

The question, stripped of all evasions, simply is, Will Congress stand by a proposition of its own making, which has been accepted by the other contracting party and completely carried out on its part in good faith?

The undersigned also submit certain affidavits from members of the tribe, giving their understanding of the treaty of 1858. It may be charged that this testimony is secondary, but it is in harmony with the position always taken by the Yankton Indians as to their interpretation of the treaty covering the question in controversy.

We also submit as a part of this report the argument of Mr. George S. Chase, submitted before the Committee on Indian Affairs, when the bill in question was under consideration.

We therefore respectfully submit that, in the opinion of the undersigned, the agreement should be ratified.

Respectfully submitted.

ROBERT J. GAMBLE.
P. J. MCCUMBER.
FRED T. DUBOIS.

[Senate Report No. 2369, Fifty-ninth Congress, First Session]

AGREEMENT WITH THE YANKTON SIOUX INDIANS OF SOUTH DAKOTA

[April 4, 1906.—Ordered to be printed]

Mr. Gamble, from the Committee on Indian Affairs, submitted the following report (to accompany S. 2993):

The Committee on Indian Affairs, to whom was referred the bill (S. 2993) to ratify an agreement with the Yankton Sioux Indians of South Dakota, and making appropriation to carry the same into effect, having considered the same, beg to report as follows, and recommend that the bill do pass:

In 1858 the Government determined to remove the Yankton Indians to a diminished reservation on the Missouri River, in what is now the State of South Dakota, and to open up the balance of their reservation to white settlement, and for that purpose requested that a delegation of chiefs and headmen of said tribe be sent to Washington for the purpose of making a treaty of cession. This delegation was selected by the agent with at least the tacit approval of the Indians. It appears that the delegation thus selected, which consisted of thirteen who came in person and three others who appeared by representation, were detained in Washington for

a period of five or six months, where a treaty was finally entered into on the 19th day of April, 1858. This treaty was ratified by the Senate on February 16, 1859, and proclaimed the same month (February 26).

There appears to be no question that the Pipestone quarries were well within the country which had been for many years the acknowledged hunting ground of the Yankton Indians, and over which they exercised practically exclusive jurisdiction. Their villages at that time were in the immediate neighborhood of these quarries, and it was from this locality, and to get them beyond the limits of the State of Minnesota, that the purchase of this territory and their removal to their present diminished reserve on the Missouri River was sought.

It is true that by the treaty of Traverse des Sioux, made seven years prior, these quarries had been included in a cession made by the Sisseton Indians; but it appears evident that the Sissetons, whose homes and villages were far distant from the locality in question, did not and could not have the claim upon it that the Yanktons had, who were living upon the very ground itself.

It was on account of the attempted sale of the Pipestone quarries by the Sioux that the Yanktons had become jealous and suspicious, and insisted that no treaty of cession should be made by them that did not as an absolute sine qua non contain complete and full recognition of their right and title to the Pipestone quarries.

That they have on every occasion, and at all times, and in every way that had been open to them, insisted upon this, from the very day of the making of the treaty of Traverse des Sioux, is beyond ques-

tion. It was their practice to appear annually at the payment made to the Sissetons and demand a part of the money, on the ground that it was payment for their land.

In his report to the Commissioner of Indian Affairs in 1857, Hon. Charles E. Flandreau, then agent for the Sissetons, speaking on this subject, says:

> It is absolutely necessary that some measure shall be taken to prevent the Yanktons from interfering in the payment of the Sissetons and Wahpetons. * * * The Yanktons claim a right to share in the annuities, and every payment that has been made has been protested and disturbed by the presence of these Indians. (Rept. Commissioner of Indians, 1857, p. 59.)

Judge Flandreau, referrin' 'terwards to these instances, makes the statement that the claim of the Yanktons that a part of their country had been included in the Sisseton cession is undoubtedly well founded, and surely no one was in a better position to know than he.

From the affidavits taken in this case, as well as from the known facts concerning the difficulties and delays incident to the negotiation of the treaty of 1858, it is abundantly established that the Indians came to Washington instructed and determined that they would enter into no treaty that did not fully and completely recognize their full and exclusive title to the land, including these quarries. That they understood the article of the treaty which was devoted to this subject as recognizing their right and title, without reserve, is, and always has been, claimed by every one of these Indians; and

the action of the Department at the time indicates that the Government itself, whatever the language of the treaty may be, acknowledged the contention of the Indians to be correct. The Government, in August of the following year, caused the quarries to be surveyed and a copy of the plat and field notes of such survey to be sent to the General Land Office, with the request that said reserve "be respected upon the books" of that office, and when the public surveys were extended over this region in 1872, the Commissioner of Indian Affairs having again called the attention of the General Land Office to this subject, the lines of the public survey were made to conform to the "Pipestone Reservation boundary" as already established.

Copies of these surveys, with plats and field notes, were transmitted by the Commissioner of the General Land Office to the surveyor general of the United States for the State of Minnesota, with instructions to "lay the same down" [illegible]e., the Pipestone Reservation—on the map of the State.

> In July, 1872, * * * the Commissioner directed the surveyor general to locate the reservation on the official plat in his office, from the field notes and plats of the original survey, and to transmit authentic copies to the general and local offices; or, if it should be impossible to locate it from these data, to direct a resurvey of the tract, so that it might be located and described upon the official plats, and its boundary respected in accordance with the treaty. (United States *v.* Carpenter, III U. S. Rep. 347.)

The decision above referred to was rendered in a case wherein a location was attempted to be made by Carpenter upon the land within the Red Pipe-

stone Reservation, and it was held by the United States Supreme Court that his entry was void, because the land was an Indian reservation, and "until the survey was made and the actual extent of the reservation was thus designated, no part of the land containing the quarries could have been taken up," the treaty being notice to the world of the reservation.

Thus it will be seen that all of the acts of the Executive Departments, of the officers of the United States in all departments, and the courts, treated and considered the land in question as a Yankton Indian reservation. In striking confirmation of this is the report of Agent Foster to the Commissioner of Indian Affairs in 1890 (see Indian Office Rept., 1891. p. 427) referring to the establishment of an Indian school upon the Pipestone Reservation, under the direction of the Secretary of the Interior, without the consent of these Indians, wherein Agent Foster says:

> The Red Pipestone Reservation in Minnesota, embracing the celebrated Red Pipestone Quarry, the spot which the Yanktons regard as the center of creation, and which gave them a supremacy over other aboriginal nations, was reserved by the Yanktons in the treaty of 1858, and was subsequently confirmed to them by an act of Congress, also Executive Department, in causing a survey thereof and designating it upon the plat of surveys as Yankton Indian Reserve. Questions involving the title to this property have frequently been before the Government, and the uniform decision has been that it is the absolute property of the tribe.
>
> It need create no surprise, then, to know that the Indians were greatly astonished and

> alarmed when they learned that Congress had directed that an Indian school should be erected there without consulting them. They do not object so much to the school, although it is of no benefit to them, as they are already provided with schools, but they regard this action as an attempt to invalidate, if not extinguish, their right to this property peremptorily and without compensation, and say that if one of them should be guilty of such an act he would be punished as a thief.

By an item in the Indian appropriation act approved July, 1891, authority was vested in the Secretary of the Interior to negotiate with the various Indian tribes for the surrender and sale of the surplus lands of their various reservations, and pursuant to that authority a representative of the Government was directed to enter into an agreement with the Yankton Indians for the cession of their surplus lands. They, however, refused to enter into such negotiations until this disputed question of the title to the pipestone quarries should be first determined. The Interior Department recognizing a valid claim on the part of the Yankton Indians, which it was as anxious as the Indians to have determined in some judicial manner and finally disposed of, authorized a provision, which was inserted in the agreement, as follows:

> If the Government of the United States questions the ownership of the Pipestone Reservation by the Yankton tribe of the Sioux Indians under the treaty of April 19, 1858, including the fee to the land as well as the right to work the quarries, the Secretary of the Interior shall, as speedily as possible,

> refer the matter to the Supreme Court of the United States to be decided by that tribunal, and the United States shall furnish without cost to the Yankton Indians at least one competent attorney to represent the interests of the tribe before the court.
>
> If the Secretary of the Interior shall not within one year after the ratification of this agreement by Congress refer the question of the ownership of the said Pipestone Reservation to the Supreme Court, as provided for above, such failure upon his part shall be construed as, and shall be, a waiver by the United States of all right to the ownership of the said Pipestone Reservation, and the same shall thereafter be solely the property of the Yankton tribe of the Sioux Indians, including the fee of the land.

It is objected that this provision was inoperative, for the reason that the Supreme Court of the United States will not pass upon a purely academic question. That this objection should at this time be urged against the ratification of the present agreement, and against the contention of title on the part of the Indians, seems to us indefensible. The Indians who consented to the submission of the question of their title to the Supreme Court of the United States were, of course, ignorant and knew nothing of the limitations upon our courts. This provision was drafted by the Department of the Interior, and the Indians had every reason to believe that the representatives of the United States, who tendered this agreement, knew what they were doing, were able to and would see to its fulfillment. Not only was the Interior Department at fault in this regard, but Congress itself ratified

this agreement (28 Stat. 315), with this provision in, as above quoted.

The land ceded under this the treaty referred to was taken possession of and opened to settlement. Can the Government now be heard to say that it prepared and presented to these Indians a scheme of settlement which was inoperative, and having induced the Indians to consent to it, took possession of the consideration moving to the Government, and when the Indians in their simplicity and faith in the Government's ability and intention to carry out its part of the agreement ask to have it performed, take refuge behind the fact that the scheme so tendered by itself is ineffectual, and decline to make reparation or to pay a just consideration to the Indians whose property it has appropriated?

But this is not all. Having made this agreement of 1892 and put into it an inoperative provision by which the Indians were induced to sign, and Congress having ratified the agreement including such provision and having neglected to provide a means by which the agreement could be made effectual, the Interior Department again sent its representative, under the authority of Congress, and made another contract with the Indians in council for the settlement of the question and the final disposition of all the troublesome matters involved in this controversy.

By the terms of this final contract entered into between the United States and the Yankton Indians on the 2d day of October, 1899, the Government agreed that for the relinquishment by the Indians of their title to the property in question, and in consideration of its numerous agreements in the

past which it failed to carry out, it would pay to said Indians the sum of $100,000.

It appears to your committee that, laying aside all question of the character or degree of the title originally held to the property by the Yankton Indians, the Government of the United States has put itself in a position where every obligation of honesty and fair dealing demands that it shall no longer trifle with this question, and where, without reference to the merits of the case, it can not with justice refuse to perform the obligation it has entered into. It has put itself into a position where it ought to be estopped from further contending over a question wherein the Indians have at all times honestly and faithfully performed their part, and wherein all of the difficulties and embarrassments that have arisen have been the result of either the ignorance or carelessness of the Government's own officers, and for which the Indians have never in the slightest degree been to blame.

Beyond all these considerations there is nothing in the agreement last made with these Indians that presents any serious objection to its ratification. In the opinion of the committee the Yankton Indians have a strong equitable title to the land in question. Affidavits are herewith submitted from leading citizens of the city of Pipestone, immediately adjoining the land in question, including the mayor and the principal professional and real-estate men of the locality, all of whom place the actual value of the property at figures very nearly corresponding to the price named in the bill and in the agreement. Lands in that locality have very materially appreciated in value since such appraisement was made.

Your committee also submit certain affidavits from members of the tribe, giving their understanding of the treaty of 1858. It may be charged that this testimony is secondary, but it is in harmony with the position always taken by the Yankton Indians as to their interpretation of the treaty covering the question in controversy.

Your committee also submit as a part of this report the argument of Mr. George S. Chase, submitted before the Committee on Indian Affairs when the bill in question was under consideration.

* * * * * * *

Your committee also submits as part of this report Senate Document No. 55, Fifty-seventh Congress, first session.

[Senate Document No. 55, Fifty-seventh Congress, first session]

RED PIPESTONE QUARRY IN MINNESOTA

From time immemorial the great Dakota, or Sioux, Nation of Indians, the most numerous and powerful tribe existing on the continent, occupied a vast tract of country on the upper waters of the Mississippi and Missouri rivers, extending to the base of the Rocky Mountains, and comprising what is now the States of North and South Dakota and parts of the States of Nebraska, Iowa, Minnesota, Wisconsin, Montana, Wyoming, and Colorado.

The Dakota Nation — "Dakota" meaning "united," "confederated," or "many in one"—was divided into various subdivisions or bands, with separate and distinct organizations, chiefs, councils, etc. By mutual consent or otherwise, these various subdivisions occupied separate and distinct portions of this vast domain, though in some cases,

owing to the absence of well-defined boundaries, the country claimed by one subdivision or band overlapped that claimed by another, and it was in this situation they were found when first visited by the whites, long before the organization of our Government; and since that time they have been so recognized and treated by the Government, many separate treaties having been made with these various subdivisions of the nation.

Among these numerous subdivisions were and are the Sisseton and Wahpeton bands, the Mdawakanton and Wahpakoota bands, and the Yankton bands, who occupied and claimed, as a portion of their territory, the lands in southwestern Minnesota within which the Pipestone Reservation is located.

By treaty of July 23, 1851 (10 Stat. 949), the Sisseton and Wahpeton bands ceded a large tract of country in Iowa, Minnesota, and the now State of South Dakota, that portion of the cession lying in Minnesota and embracing the Pipestone Reservation being described as lying east of the following line:

"Beginning at the junction of the Buffalo River with the Red River of the North, thence along the western bank of said Red River of the North to the mouth of the Sioux Wood River, thence along the western bank of said Sioux Wood River to Lake Traverse, thence along the western shore of said lake to the southern extremity thereof, thence in a direct line to the junction of Kamppeska Lake with the Tehankasandata or Sioux River, thence along the western bank of said river to its point of intersection with the northern line of the State

of Iowa, including the islands in said rivers and lake."

This cession of course extinguished the Indian right of occupancy and vested the whole title in the United States, so far as the Sisseton and Wahpeton bands are concerned.

The Yankton band, however, always claimed, as shown by the records of the Indian Office, that this cession by the Sissetons and Wahpetons of lands in Minnesota covered a portion of the country belonging to the former, within which is situated the Pipestone Reservation, and at each payment made to the Sissetons and Wahpetons in conformity with the provisions of the treaty of 1851 the Yanktons appeared in large numbers and demanded a share in the payment on the ground that a portion of their country had been ceded by the former bands. Though this claim was persistently and earnestly urged by the Yanktons, it was never recognized by the Government, and finally a treaty was entered into with the Yanktons on April 19, 1858 (11 Stat., 743), by article 1 of which the Indians "hereby relinquish and abandon all claims and complaints about or growing out of any and all treaties heretofore made by them or with other Indians, except their annuity rights under the treaty of Laramie of September 17, A. D. 1851." This, of course, was a complete relinquishment of all claim by the Yanktons to any part of funds due the Sissetons and Wahpetons under the treaty of 1851. At the same time the Yanktons adhered to their contention that they were the rightful owners of the Pipestone Quarry; that their rights thereto had never been relinquished, and that the cession by the Sissetons and Wahpetons under the treaty of 1851 could not

operate upon or in anywise affect their (the Yankton's) right and title to the Pipestone Quarries and the adjacent country. This contention seemed to be well founded, for the reason that the quarries and their vicinity were well known to be fully within what had from time to time out of mind been the immediate country of the Yanktons. At the time of the negotiations for the removal of these Indians to the present reservation upon the Missouri River they were extremely loath to leave their old home and did everything in their power to prevent the determination of the Government to remove them from being carried out.

The Pipestone Quarries were to them a hallowed and sacred spot, and it had been held in superstitious reverence by their forefathers from the earliest times to which their traditions extended.

Mr. George Catlin, the discoverer of these quarries and the first white man to visit and examine them, and from whom the stone catlinite derives its name, in his account of his visit there in 1836, says:

"From the great number of graves and remains of ancient fortifications in its vicinity it would seem, as well as from their actual traditions, that the Indian tribes have long held this place in high superstitious estimation."

In their speeches made to him when opposing his advance into this region they said to him:

"This red pipestone was given to the red men by the Great Spirit. It is a part of our flesh, and therefore is great medicine. * * * No white man has ever been to this Pipestone Quarry, and our chiefs have often decided in council that no white man ever shall go to it. * * * You see

that the sweat runs from my face, for I am troubled. * * * The Great Spirit has told us that the red pipestone is only to be used for pipes."

The picturesque Indian lore of the Northwest is filled with myths and legends concerning this sacred place. For these reasons, in the negotiations they were compelled to enter into for the cession of their lands, they uniformly insisted upon provisions excepting the quarries and their immediate vicinity from the operation of such grants.

In the speeches that were made by their chiefs and headmen at the various councils they prophesied that if they should permit themselves to be removed so far away from this spot it would only be a few years till the Government would deny that they had any claim to the pipestone country at all, thus showing a shrewd foresight, begotten of painful experience in similar transactions with the Government. The very danger of which their speakers so eloquently expressed their fears at that time has arisen to confront them now in their helplessness.

In consideration of their fears so expressed, an article (8) was inserted in the treaty, that—

"The Yankton Indians shall be secured in the free and unrestricted use of the Red Pipestone Quarry, or so much thereof as they have been accustomed to frequent and use for the purpose of procuring stone for pipes; and the United States hereby stipulate and agree to cause to be surveyed and marked so much thereof as shall be necessary and proper for that purpose, and retain the same and keep it open and free to the Indians to visit and procure stones for pipes so long as they shall desire."

In pursuance of the foregoing a contract was made with Messrs. C. H. Snow and Henry Sutton, surveyors, to survey said reservation, which they did in August, 1859, and on November 21, 1859, copies of the plats and field notes of the survey were transmitted by the Indian Office to the General Land Office, with the request that the exterior boundaries of said reserve "be respected upon the books" of that office. However, when the Government survey was extended over the township in which said reserve is situated, to wit, townships 106 and 107 north, range 46 west, fifth principal meridian, Minnesota, in September and October, 1870, and approved in November of that year by the surveyor general of Minnesota, such survey was extended over the reservation without respecting it or its boundaries.

The surveyor general's attention was called to the matter by the General Land Office May 9, 1872, and he was directed to take steps to have the survey of the reserve laid down on the township plats according to its limits, as shown by the plats and field notes of said survey of August, 1869. This he did by causing a resurvey to be made, so as to connect its boundaries with the lines of the public survey, from which resurvey new plats of the townships named, showing the Pipestone Reservation, were prepared, and approved by him August 15, 1872.

The reservation is a tract of land a little more than a mile square, situated in sections 1 and 2, township 106 north, range 46 west, and sections 35 and 36, township 107 north, range 46 west, fifth principal meridian, Minnesota, containing 648.40

acres, and embracing the quarries of the well-known "red pipestone."

On July 15, 1871, one August Cluenson located Louisiana Agricultural College strip upon a quarter-section within said reservation, and on May 15, 1874, a patent was issued to him therefor.

Suit in equity to vacate this patent was brought. To this the defendants demurred, alleging want of equity, and the court sustained the demurrer and dismissed the bill. Upon appeal to the Supreme Court the decree was reversed and directions given to overrule the demurrer, the court holding as to said reservation that—

"The whole of such land was by treaty withdrawn from private entry or appropriation until the Government had determined whether any portion less than the whole should be reserved. Its power of selection, if the whole was not retained, could not be restricted by the action of private parties. So, in any view which can be taken, the entry of Cluenson was void. It matters not whether the land had been surveyed or not, the treaty was notice that a part of the quarry would be retained by the Government, and that the whole might be, for the use of the Indians. This purpose and the stipulation of the United States could not be defeated by the action of any officers of the Land Department." (See U. S. *v.* Carpenter, 111 U. S. R., p. 349.)

By section 2 of the act of Congress approved February 16, 1891 (26 Stat. 764), the Secretary of the Interior was directed to cause Indian industrial or training schools to be established in the States of Wisconsin, Michigan, and Minnesota, the one in the State last named to be located on the said

Pipestone Reservation. Accordingly, all of the said reservation was appropriated for the use of the school established thereon, subject, however, to the treaty rights of the Indians to go thereon for the purpose of quarrying stone. To this appropriation the Indians vigorously protested, and made application for compensation for the lands so appropriated and which they claimed to be theirs by treaty stipulation, but in an opinion of the Assistant Attorney General of the Interior Department, dated September 17, 1891, it was held that as the title to the lands was in the United States and that the rights of the Indians under the treaty of 1858 were not abridged or interfered with, the lands could be appropriated for such school purposes without the consent of the Indians and without compensating them therefor.

Referring to this action, Agent Foster, in his report to the Commissioner of Indian Affairs in 1890 (see Indian Office Rep., 1891, p. 427), says:

"The Red Pipestone Reservation in Minnesota, embracing the celebrated Red Pipestone Quarry, the spot which the Yanktons regard as the center of creation, and which gave them a supremacy over other aboriginal nations, was reserved by the Yanktons in the treaty of 1858, and was subsequently confirmed to them by an act of Congress, also executive department, in causing a survey thereof and designating it upon the plat of surveys as Yankton Indian Reserve. Questions involving the title to this property have frequently been before the Government, and the uniform decision has been that it is the absolute property of the tribe.

"It need create no surprise, then, to know that the Indians were greatly astonished and alarmed

when they learned that Congress had directed that an Indian school could be erected there without consulting them. They do not object so much to the school, although it is of no benefit to them, as they are already provided with schools; but they regard this action as an attempt to invalidate, if not extinguish, their title to this property peremptorily and without compensation, and say that if one of them should be guilty of such an act he would be punished as a thief."

The Indians have always claimed and maintained that the appropriation of this reservation was an unjust, unauthorized, and arbitrary interference with and, in fact, a destruction of their rights guaranteed by treaty, and that the ruling of the Secretary of the Interior which denied them compensation therefor was unjust and, in fact, a confiscation of their property. In view of this state of affairs, and under the authority vested in the Secretary of the Interior by an item contained in the Indian appropriation act of July 13, 1892, to negotiate with Indians for the surrender of portions of their respective reservations, an agreement was entered into with the Yankton Indians under date of December 31, 1892, ratified by act of Congress approved August 15, 1894 (28 Stat. 315), by article 16 of which it was agreed that—

"If the Government of the United States questions the ownership of the Pipestone Reservation by the Yankton tribe of Sioux Indians under the treaty of April 19, 1858, including the fee to the land, as well as the right to work the quarries, the Secretary of the Interior shall, as speedily as possible, refer the matter to the Supreme Court of the United States to be decided by that tribunal,

and the United States shall furnish without cost to the Yankton Indians at least one competent attorney to represent the interests of the tribe before the court.

"If the Secretary of the Interior shall not, within one year after the ratification of this agreement by Congress, refer the question of the ownership of the said Pipestone Reservation to the Supreme Court, as provided for above, such failure upon his part shall be construed as, and shall be, a waiver by the United States of all right to the ownership of the said Pipestone Reservation, and the same shall thereafter be solely the property of the Yankton tribe of the Sioux Indians, including the fee of the land."

Steps were accordingly taken by the Secretary of the Interior to have the question as to the title to the lands within this reservation referred to the United States Supreme Court, as provided for in said agreement, but it was held by the Attorney General to be impracticable to take such action for reasons set out in his letter to the Secretary of the Interior of November 20, 1894, and advised that Congress be asked to enact additional legislation on the subject, and such effort was made, but without result.

Immediately on the expiration of one year, fixed by the agreement as above stated, within which the question was to be referred to the Supreme Court, the Indians asked the Secretary of the Interior to be informed by official and authenticated letter that the Pipestone Reservation was, without the possibility of contest, the property of the tribe as provided for by the sixteenth article of the aforesaid agreement, but no reply was made to this request

of the Indians, and so the matter rested until Congress, by an item contained in the Indian appropriation act of June 7, 1897 (30 Stat. 87), provided that—

"The Secretary of the Interior is directed to negotiate with the Yankton tribe of Indians of South Dakota for the purchase of a parcel of land near Pipestone, Minn., on which is now located an Indian industrial school."

This provision of law was construed by the Secretary of the Interior as authorizing the negotiation of an agreement either for cession of the entire reservation, or, if the Indians refused to cede it all, then for that portion thereof upon which the Indian industrial school and the improvements connected therewith are located, and Inspector McLaughlin was so informed in his instructions to negotiate with the Indians.

After very tedious and painstaking effort on the part of Inspector McLaughlin, an agreement was finally effected with the Indians on October 2, 1899, wherein the Indians ceded to the United States all their right, title, and interest in and to the said Pipestone Reservation, for and in consideration of the sum of $100,000, with the proviso that the Yankton Indians, and none other, shall have the privilege of going upon the reservation, under such regulations and conditions as may be prescribed by the Secretary of the Interior, for the purpose of procuring and mining pipestone for their use, at such times and in such quantities as they may desire; such privileges to be limited to an area of 40 acres; not to be confined to a technical legal subdivision, unless it be determined that the best quarry of pipestone is situated within the limits of such

subdivision; such selection to be indicated and marked by the Secretary of the Interior with the concurrence of a delegation of five Yankton Indians.

This agreement was submitted to Congress for its ratification by the Secretary of the Interior with his letter of March 24, 1900, and may be found printed, with accompanying papers, in House Doc. No. 535 of the Fifty-sixth Congress, first session.

From what has been said, as well as from what is shown by the records of the Indian Office, including Brodie's Map of Indian Cessions, there is no question whatever that no Indians but the Sisseton and Wahpeton band of Sioux ever claimed any interest in the country, or any part thereof, within which this Pipestone Reservation is located, except the claim of the Yanktons, at all times previous to and after the treaty of 1858 with them, hereinbefore referred to.

Upon this point the Commissioner of Indian Affairs, in a communication to Hon. R. J. Gamble, under date of March 6, 1897, said:

"Referring to the inquiry of the delegation of Yankton Indians, with whom you called to-day regarding the red pipestone quarry in Minnesota, I have to advise you that the eighth article of the treaty between the United States and the Yankton tribe of Sioux or Dakota Indians, concluded April 19, 1858 (11 Stat. 743), provided that said 'Yankton Indians shall be secured in the free and unrestricted use of the pipestone quarry, or so much thereof as they may have been accustomed to frequent and use, for the purpose of securing stones for pipes,' etc. Whatever rights were secured under this article of the treaty were vested in the

Yankton Indians and the Yanktons alone. The recent agreement with the Yankton Indians did not alter the status of the Pipestone Reservation in this respect, whatever effect it may have had upon the rights of the United States and the Yankton Indians, and in the opinion of this office no Indian other than the Yankton Sioux have any legitimate claim to said reservation." (P. 37, House Doc. No. 535, Fifty-sixth Cong., 1st sess.)

Further discussion on this subject seems to be unnecessary.

As has been seen, the agreement of 1892 stipulated that the question of the title to the lands within this reservation was to be submitted to the United States Supreme Court for determination, with the distinct and unqualified condition that failure to do so within one year from the date of the ratification of the agreement "shall be construed as, and shall be, a waiver by the United States of all rights to the ownership of the said Pipestone Reservation, and the same shall thereafter be solely the property of the Yankton tribe of the Sioux Indians, including the fee to the land."

It is true that, for reasons beyond his control, it was impossible for the Secretary of the Interior to submit to the United States Supreme Court the question as to the title of the lands in this reservation within the year limited in the agreement, or at any time, without legislation by Congress, but that condition existed without fault on the part of the Indians, who made and carried out the agreement in good faith, not because they wanted to part with the reservation, but because the United States wanted and had already appropriated the land to

its own use without compensation to them. It is apprehended that it will not be seriously contended by anyone but that the failure to submit this question to the United States Supreme Court for determination, no matter what the cause, vested in the Yankton tribe of Indians the absolute fee-simple title to the lands within this reservation. This view of the question seems to have been taken by Congress in directing the Secretary of the Interior, by the act of June 7, 1897, to negotiate with the Yanktons for its purchase. If the Indians were not the owners of these lands, how could they be purchased from them? Upon what other hypothesis could the Indians be negotiated with? Where there is authority or agreement to purchase by one party, there must be something to sell or convey by the other.

Some objection is made on account of the price agreed to be paid—$100,000—seeming exorbitant for the amount of land involved. It must not be forgotten that intense and romantic history surrounds this locality and its wonderful and unique product. The region has been aptly termed the "Holy Land" of the great tribes of the Northwest. It is a most singular fact that this stone, held in superstitious reverence by all the tribes of that region from the remotest time to which their legends run, should be found by our geologists to occupy a strangely unique place in the mineralogy of the world, no stone of this peculiar character ever having been discovered elsewhere in the world. Its commercial value is quite undeterminable, for in the possession of a private company which could exploit its mystic and legendary interest and work it into the innumerable devices for which it is so

remarkably adaptable its value could be made to exceed many times the figure fixed by the agreement, while to the Indian, with his romantic and deeply grounded reverence for it, dollars can hardly measure the estimation in which he holds it—an estimation not entirely unappreciated by ourselves and in which we do not fail to sympathize.

In a letter to the Commissioner of Indian Affairs, dated April 12, 1898, Maj. J. W. Powell, Director of the United States Bureau of Ethnology, says:

"The Sacred Pipestone Quarries of the Sioux Indians were located within a glen formed by Pipestone Creek, in what is now Pipestone County, Minn., and within the present Indian reservation. The bluffs bounding the glen consist of indurated red sandstone of Algonquian age, representing the formation known as Sioux quartzite. The pipestone proper, or catlinite, is found in one or more beds intercalated between heavy ledges of the quartzite. The locality is one of two or three typical exposures from which the formation has been defined by geologists.

"Special interest attaches to the locality by reason of the purpose and extent of the aboriginal quarrying operations. To the Indian shamans and warriors the pipe was a sacred symbol of peace, the stone from which it was carved was of sacred material, and the locality in which it was found a hallowed spot. Accordingly, the site of the quarries was a sacred place, known to the tribesmen of a large part of the continent, and there they gathered peacefully, as under a perpetual truce, and there tribal differences and strife were forgotten. It is not too much to say that the great Pipestone Quarry was the most important single locality in

aboriginal geography and lore. Here the tribesmen gathered and developed the industry of quarrying in extensive fashion; with their rude implements they made excavations in search of the soft bed of catlinite, cut out the material in blocks, and carved it into calumets of artistic design; and when the accessible supply of soft stone was exhausted they patiently removed the overlying ledges of obdurate quartzite in order to lay bare fresh supplies of the sacred material. The work continued through uncounted generations; and here the mechanical industries of the Indians of the plains and of the forest attained perhaps their highest development, while there was a similar development of artistic device and concept. At the same time the material extracted at so great a cost became an article of primitive commerce or interchange among the tribes and was transported to distant parts of the country, materially affecting intertribal relations.

"The locality was visited in 1892 by a collaborator of the bureau, and extensive examinations and plane-table surveys were made. The examinations and surveys were designed as the basis for a special report, the preparation of which has thus far been prevented by circumstances, including an unforeseen change in personnel. As shown by the plane-table sheets and accompanying photographs, the glen of Pipestone Creek is a most picturesque spot in a region of monotonous character, while it abounds in the most extensive aboriginal quarries in the country, which furnish a highly significant record of aboriginal industry and philosophy. The quarries are confined to an area of somewhat less

than 1 square mile, lying altogether within the present Indian reservation. In addition to the interest attaching to the locality as a sacred place of the Indians, the Pipestone Quarries possess a unique historical interest. The earliest explorers of the region learned of the existence of the quarries, and several of them made their way to the locality, so that the spot has become a sort of datum point for the tracing of obscure narratives and routes before the days of systematic explorations. Among the early explorers who visited the spot was J. N. Nicollet; and his party carved their names and the date of their visit on the obdurate sandstone cliffs, where they remain to-day, forming one of the most interesting among our historical monuments.

"Accordingly the ancient Pipestone Quarries are of great and unique interest, first, as embracing a type locality in geology; second, as an aboriginal gathering place in which the industrial and æsthetic characteristics of the Indians were developed and in which the tribesmen learned the lesson of peace: third, as a particularly appropriate and picturesque site for a park; fourth, as a datum point for national literature which is already immortalized in song and story, and, fifth, as a monument of our early history.

"For these and other reasons which it might be tedious to recite, I am strongly of the opinion that it would be proper and desirable to reserve an area of 2 or 3 square miles, including the Pipestone Quarries, as a national reservation to be dedicated to the use of the public forever. I have the honor to recommend that this be done and that provision

be made for protecting the quarries and other features against depredation and vandalism.

"I have the honor to be, yours, with respect,

"J. W. POWELL, *Director.*"

It would seem, therefore, from all evidence adducible, that the Yankton Indians have at no time relinquished their firm claim to the ownership of this tract; that they have always and steadfastly refused to enter into any treaty or agreement that has not, as they understood it, fully recognized the validity of their claim; that Congress and the Executive Departments have repeatedly admitted the contention of the Indians to be well founded; that the price stipulated to be paid, by the agreement with them of October, 1899, is not, in view of all the circumstances, excessive, and that said agreement should be ratified.

○